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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The return of refugees' or displaced persons' property

Working paper submitted by Mr. Paulo Sérgio Pinheiro pursuant to Sub-Commission decision 2001/122*

* The document was submitted late to the conference services due to the fact that, by virtue of the specialized nature of its subject, it necessitated additional consultations with a specialized agency to verify its extensive references.

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Introduction

1. The Commission on Human Rights, in its resolutions 1996/25, 1997/22 and 1998/28, called upon the Sub-Commission and its members further to enhance cooperation with mechanisms of the Commission and, within their competence, with all relevant bodies, including human rights treaty bodies. In its resolution 1999/81, the Commission welcomed the Sub-Commission's efforts to enhance such cooperation and in its resolution 2002/66 it reaffirmed that the Sub-Commission could best assist the Commission by providing it with independent expert studies carried out by its members.

2. At the seventh meeting of persons chairing the human rights treaty bodies, in 1996, the chairpersons of the treaty-monitoring bodies recommended that the treaty bodies should take a more active role in supporting, suggesting topics for and cooperating in the preparation of studies by the Sub-Commission.[1]

3. The Committee on the Elimination of Racial Discrimination (CERD) discussed this issue during its fiftieth session in 1997,[2] and decided to propose to the Sub-Commission nine topics for the preparation of studies, including "the return of refugees' or displaced persons' property".[3] CERD observed that:

> "The flight of hundreds of thousands of refugees or displaced persons who leave their homes and properties empty, as a result of an armed conflict, frequently results in such property being occupied by non-authorized people. Such is at present the case in the Great Lakes region, Bosnia and Herzegovina, Cyprus and elsewhere. After their return to their homes of origin all such refugees and displaced persons have the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated for any such property that cannot be restored. Furthermore, any commitments or statements relating to such property made under duress should be null and void.
>
> "The magnitude of this problem is such that it requires a study on the basis of international law and existing international instruments in the field of human rights."[4]

4. Mr. Michael Banton, then Chairperson of CERD, in a letter dated 19 March 1997,[5] communicated these proposals to the Chairperson of the forty-eighth session of the Sub-Commission and requested that he present them to the Sub-Commission during its forty-ninth session.

5. At its forty-ninth session, the Sub-Commission, in resolution 1997/5, expressed its gratitude to CERD for recommending future Sub-Commission studies that could usefully contribute to the work of CERD. Furthermore, the Sub-Commission, in its decision 1997/112, decided to devote special attention to subjects proposed by treaty bodies when choosing new subjects for study. The Sub-Commission has also responded to the request of CERD by undertaking working papers, as well as subsequent comprehensive studies authorized by the Commission on Human Rights and the Economic and Social Council, with regard to two of the other topics proposed by CERD: affirmative action, and the rights of non-citizens.

6. In its resolution 1999/47, the Commission on Human Rights encouraged the Sub-Commission to continue its work on the matter of housing and property restitution in the context of return of refugees and internally displaced persons.

7. At its fifty-third session, the Sub-Commission, in decision 2001/122, entrusted Mr. Paulo Sérgio Pinheiro with the preparation of a working paper on the return of refugees' or displaced persons' property, to be submitted to the Sub-Commission in order to enable it to take a decision at its fifty-fourth session on the feasibility of a comprehensive study on that subject.

8. This working paper is hereby submitted in accordance with Sub-Commission decision 2001/122.

I. TERMINOLOGY

9. For the purpose of this working paper, the phrase "housing and property" refers to housing and real property, including land. This definition is used for two key reasons. First, housing and real property restitution in the context of the right to return of refugees and other displaced persons has deservedly received a great deal of attention from the international community, more so than other types of property restitution. This attention is due in large part to the unique role that housing and real property restitution play in securing the voluntary, safe and dignified return of refugees and other displaced persons to their homes and places of original residence.

10. Second, housing rights are enshrined in international law to a far greater degree and encompass far more, substantively speaking, than are more general property rights.[6] Accordingly, the main focus of this working paper is on issues related to housing and real property restitution.

11. The term "restitution" refers to an equitable remedy, or a form of restorative justice, by which persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position. The remedy includes, for example, the return of arbitrarily or illegally confiscated housing or property. Again, housing and property restitution is increasingly viewed as a right of displaced persons and refugees under international human rights law, and as the key means of returning situations involving displacement to their original state.

12. The term "compensation" refers to a legal remedy by which a person receives monetary payment for harm suffered, for example resulting from the impossibility of restoring the person's property or house.

II. PRELIMINARY COMMENTS

13. The topic of this working paper is one of great importance, as it is increasingly being recognized that, for many refugees and other displaced persons, dispossession of their homes lies at the root of their displacement, and therefore one of the prime concerns for those returning or attempting to return to their countries of origin is the resolution of property and housing issues before and subsequent to return.

14. Additionally, ensuring the restitution of housing and property temporarily lost owing to displacement has also become an increasingly prominent component of efforts to protect human rights, restore the rule of law and prevent future conflict in countries currently undergoing post-conflict reconstruction.

15. The conditions under which people come to lose their homes and properties differ across cases, but often involve arbitrary displacement, protracted civil conflict, ethnic cleansing, uncompensated expropriation or discriminatory confiscation. Ensuring housing and property restitution and, thereby, the right to return in safety and in dignity, is essential in order not to allow the results of such conditions to remain in place, as well as to protect the human rights of the victims of such situations.

III. DURABLE SOLUTIONS TO DISPLACEMENT

16. The Office of the United Nations High Commissioner for Refugees (UNHCR) has identified three key durable solutions to the problems faced by refugees: (i) integration into countries of asylum; (ii) resettlement in third countries; and (iii) voluntary repatriation.[7] Housing and property restitution are often essential in order to facilitate the durable solution of repatriation, a solution often preferred by many refugees and other displaced persons.

17. With respect to voluntary repatriation, this solution has its origins in General Assembly resolution of 14 December 1950, in which the Assembly adopted the UNHCR Statute and called upon Governments to cooperate with the High Commissioner for Refugees in the performance of his [or her] functions by, inter alia, assisting the High Commissioner in his [or her] efforts to promote the voluntary repatriation of refugees. Since then, various Executive Committee conclusions have further elaborated the role and policy perspectives of UNHCR with respect to voluntary repatriation.

18. For example, in EXCOM Conclusion No. 18 (XXXI) of 1980, the Executive Committee "called upon governments of countries of origin to provide formal guarantees for the safety of returning refugees and stressed the importance of such guarantees being fully respected and of returning refugees not being penalized for having left their country of origin for reasons giving rise to refugee situations".[8]

19. Similarly, in EXCOM Conclusion No. 40 (XXXVI) of 1985, the Executive Committee reaffirmed "the basic rights of persons to return voluntarily to the country of origin" and affirmed "the need for [repatriation] to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his [or her] country of origin".[9]

20. The UNHCR Handbook on Voluntary Repatriation provides additional guidance on these issues. The Handbook stresses, for instance, that the mandate of UNHCR includes promoting "the creation of conditions that are conducive to voluntary return in safety and with dignity" and promoting "the voluntary repatriation of refugees once conditions are conducive to return".[10] In addition, it states that the recovery and restitution to returnees of their land or other immovable and movable property which they may have lost or left behind are to be included in any tripartite agreement or any declaration of amnesties and guarantees.[11]

21. UNHCR just recently stated that experience has shown that voluntary repatriation operations are likely to be less successful if housing and property issues are left too long unattended, particularly if refugees are not able to recover their houses and property in the country of origin.[12] This statement, together with the aforementioned conclusions and guidelines acknowledges that, in many attempts at voluntary repatriation, return is neither successful nor durable if the underlying housing and property issues are not addressed.

IV. THE RIGHT TO RETURN TO ONE'S HOME AND THE ROLE OF HOUSING AND PROPERTY RESTITUTION

A. The right to return to one's home

22. The right of return is now understood to encompass not merely returning to one's country, but to one's home as well. Indeed, the right of refugees and displaced persons to return to their homes is recognized by the international community as a free-standing, autonomous right in and of itself.[13] In 1980, the General Assembly, in its resolution 35/124 on international intervention to avert new flows of refugees, reaffirmed "the right of refugees to return to their homes in their homelands". This understanding is important in order to protect effectively the right to return of refugees and displaced persons and in order to ameliorate situations leading to instability and displacement.

23. The United Nations has also consistently reaffirmed this principle when addressing specific cases of displacement. For example, the Security Council, in its resolution 820 (1993) concerning Bosnia and Herzegovina, adopted on 17 April 1993, reaffirmed that "all displaced persons have the right to return in peace to their former homes and should be assisted to do so".

24. Similar language by the Security Council reaffirming the right to return to one's home can be found in resolutions addressing displacement in numerous countries and regions, including Abkhazia and the Republic of Georgia,[14] Azerbaijan,[15] Bosnia and Herzogovina,[16] Cambodia,[17] Croatia,[18] Cyprus,[19] Kosovo,[20] Kuwait,[21] Namibia[22] and Tajikistan.[23]

25. Other United Nations bodies have also reaffirmed the right to return to one's home. For instance, in addition to resolution 35/124 mentioned above, the General Assembly has reaffirmed or recognized the right to return to one's home in resolutions concerning Algeria,[24] Cyprus,[25] Palestine/Israel[26] and Rwanda.[27]

26. Likewise, the Sub-Commission reaffirmed "the right of all refugees ... and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish" with the adoption, without a vote, of resolution 1998/26, entitled "Housing and property restitution in the context of the return of refugees and internally displaced persons".

27. CERD reaffirmed this principle in its General Recommendation XXII on article 5 and refugees and displaced persons, in which it states: "all ... refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety".[28]

28. Finally, the international community, meeting in Durban, South Africa in August and September 2001 for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, unequivocally declared its universal recognition of "the right of refugees to return voluntarily to their homes and properties in dignity and safety, and urge[d] all States to facilitate such return".[29]

B. Housing and property restitution

29. Housing and property restitution must be seen as a necessary component of the implementation of the right to return to one's home. Indeed, within the context of international human rights law, the right to housing and property restitution is recognized as an essential element of the right to return for refugees and displaced persons.[30]

30. For example, as mentioned above, the Security Council in resolution 820 (1993) stated that "all displaced persons have the right to return in peace to their former homes and should be assisted to do so". The Durban Declaration reaffirms "the right of refugees to return voluntarily to their homes and properties in dignity and safety, and urge[s] all States to facilitate such return".[31] It is important to point out that the international community has thus affirmed that States should assist or facilitate the right to return to one's home. Assistance or facilitation implies, inter alia, the provision of housing and property restitution as a remedy for those displaced from their homes and lands.

31. The Commission on Human Rights has also addressed restitution as an essential remedy. Forced displacement is often precipitated by forced eviction, or in any event can be characterized as resulting in de facto forced eviction. The Commission has clearly stated that the practice of forced eviction "constitutes a gross violation of human rights".[32]

32. The Commission on Human Rights has examined the remedy of restitution in the context of such violations of human rights. In several resolutions concerning restitution, compensation and rehabilitation for victims of grave violations of human rights, the Commission has consistently referred to the "right to restitution ... for victims of grave violations of human rights".[33] It can therefore be construed that restitution as a remedy for actual or de facto forced eviction resulting from forced displacement is itself a free-standing, autonomous right.

33. Several international legal instruments recognize or include the principle of housing and property restitution. For instance, provisions of humanitarian law are applicable with respect to housing and property restitution. The Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 1949, for example, provides in article 49 that:

> "Persons ... evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased."

34. Likewise, the Rome Statute of the International Criminal Court authorizes restitution as a remedy for violations occurring under its jurisdiction. Article 75, paragraph 1, of the Rome Statute states:

> "The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation."

35. Other instruments recognize restitution as a remedy. For instance, the draft articles on the responsibility of States for internationally wrongful acts, adopted by the International Law Commission and transmitted to the United Nations General Assembly in 2001,[34] recognize restitution as a proper remedy for certain violations of international law.

36. Article 35 of the draft articles on State responsibility states:

> "Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination."

37. Article 36 states further that:

> "A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed."

38. The Sub-Commission has also addressed this subject, issuing one of the strongest statements regarding housing and property restitution in its resolution 1998/26 of 26 August 1998, in which it urged:

> "all States to ensure the free and fair exercise of the right to return to one's home and place of habitual residence by all refugees and internally displaced persons and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems."

39. CERD has recognized the necessity of restitution, of both housing and other property, as a remedy for displacement. In its General Recommendation XXII on article 5 and refugees and displaced persons, CERD stated:

> "All ... refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them."[35]

40. The right to housing and property restitution has also been recognized and utilized in several agreements designed to end conflict, including those dealing with the return of displaced persons in post-conflict situations in Bosnia and Herzegovina,[36] Cambodia,[37] Guatemala,[38] Kosovo,[39] Mozambique[40] and Rwanda.[41]

41. Additionally, the right to housing restitution has been recognized at the national level, either constitutionally or through national legislation, in several countries, including

Bosnia and Herzegovina,[42] Bulgaria,[43] the Czech Republic,[44] Estonia,[45] Germany,[46] Rwanda,[47] Slovenia,[48] South Africa[49] and Tajikistan.[50] This recognition illustrates how housing and property mechanisms can be created and implemented for specific situations.

V. ISSUES REQUIRING FURTHER STUDY

42. It is clear from the above that the principle of housing and property restitution has been enshrined in international and national law, reaffirmed by the international community and recognized by independent United Nations expert bodies. Yet, housing and property restitution all too often is not a reality for millions of persons wishing to return to their homes in safety and dignity. This unfortunate reality illustrates that much more is needed with respect to the implementation of standards designed to facilitate the right to return to one's home. This disjunction between existing standards and the reality on the ground requires comprehensive examination in order to understand why those standards have not been adequately implemented and how best to implement them.

43. Several impediments to the right to return exist, and provide concrete examples of the problems resulting in inadequate implementation of housing and property restitution. While many are beyond the scope of this working paper, some can be addressed preliminarily within this context and others can at least be initially identified as impediments. A more comprehensive examination is required in order to identify all impediments to return. Analysing the particular manner by which each of these impediments manifests itself and developing effective measures to overcome them are crucial elements of any strategy to promote housing and property restitution, and thereby facilitate the right to return to one's home.

44. One of the key impediments to housing restitution, and thus the right to return, is the absence of effective and accessible judicial remedies, which severely limits the utility of pursuing judicially-based solutions as a means of restoring rights to housing and property. This is particularly the case in post-conflict situations and severely limits the utility of pursuing judicially-based solutions as a means of restoring rights to housing and property.

45. One interim solution to this impediment is the establishment of ad hoc independent housing and property commissions designed to promote the right to housing and property restitution. The Commission on Real Property Claims in Bosnia and Herzegovina[51] and the Housing and Property Directorate in Kosovo[52] provide examples of how the lack of independent local judicial systems can be overcome.

46. Secondary occupation of displaced persons' homes is another impediment to return. Indeed, the problem of secondary occupation continues to severely hamper return efforts in Bosnia and Herzegovina, Croatia, Kosovo, Georgia, Azerbaijan, Armenia, Rwanda, Bhutan and elsewhere.[53]

47. In many cases, secondary occupation is enforced, encouraged and/or facilitated by the forces that caused the initial displacement, and the secondary occupiers themselves may have had little or no choice in relocating to the housing in question. In other circumstances, the empty

housing may have been utilized for legitimate humanitarian purposes, for example housing other displaced persons. It is, thus, often innocent persons, acting in good faith, who occupy homes belonging to refugees or other displaced persons.

48. Reversing this particular obstacle to restitution has proven very difficult unless adequate measures are taken to ensure that current occupants will be protected against homelessness or unreasonable relocation. Secondary occupation thus creates challenges to housing restitution that require a coherent policy response, based on human rights and other legal principles which clearly recognize the pre-eminence of the right to housing and property restitution of legitimate title holders. A thorough examination and analysis of existing and potential policies designed to address secondary occupation should thus be part of a comprehensive study of housing and property restitution for refugees and displaced persons.

49. Abandonment laws pose yet another impediment to the right to return. Such laws and policies, by which persons who vacate their housing for a certain period are deemed to have voluntarily relinquished their housing and property rights, have often been employed against refugees and displaced persons. The cases arising out of the former Republic of Yugoslavia provide some examples.

50. Abandonment laws are often used to punish displaced persons for fleeing and may also be used to facilitate and entrench policies of ethnic cleansing or demographic manipulation. They are also responsible for much of the lack of confidence displaced persons may feel with respect to their ability realistically to return home in safety.

51. Such laws not only impede the right to return, but often violate the principles of non-discrimination and equality, as they usually apply to or are enforced against specific racial, ethnic, religious or other groups.

52. Similarly, failing to rectify discriminatory, arbitrary or otherwise unjust application of law in countries of return contributes to preventing successful measures of restitution and even to future instability and conflict. In Georgia, for example, the legacy of discriminatory application of the 1983 Housing Code against Ossetians who fled their homes during the 1990-1992 conflict prevented large-scale return for several years. Likewise, the application in Kosovo of the Law on Changes and Supplements to the Limitations on Real Estate Transactions, as well as the persistent discrimination directed against the Albanian population of Kosovo, resulted in the arbitrary annulment of housing and occupancy rights, thus complicating the restitution process.

53. Yet another impediment is created by the practice of intentionally destroying property registration and other official records giving proof of ownership or occupancy rights, which often accompanies forced displacement, particularly in the context of ethnic cleansing. The existence of such records, combined with rights to access them, facilitates the return process by enhancing successful housing restitution.

54. Additionally, potential returnees have alleged that they were forced to conclude sale or rental contracts under duress at the time of flight, and are thus unable to return to their homes.

Such claims may or may not be true and proving them is often difficult. Mechanisms need to be developed in order to determine to the maximum possible extent which assertions of duress are true and which are false.

55. The impediments to return identified above require comprehensive examination. Likewise, there is a need to identify additional impediments to return, to analyse the particular manner in which individual impediments manifest themselves and to develop effective measures to overcome them.

56. Finally, the issue of compensation in lieu of restitution requires detailed examination. Some initial comments, however, can be made with respect to this issue.

57. The overwhelming consensus regarding the remedies of restitution and compensation is that compensation should not be seen as an alternative to restitution and should only be used when restitution is not factually possible or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution. For example, an injured party should receive compensation to remedy the wrongful dispossession of housing only if that particular housing no longer exists or if the injured party knowingly and voluntarily decides it is in her or his interest not to return to her or his home.

58. In its General Recommendation XXIII on indigenous peoples, CERD affirmed such a formulation in the context of indigenous land and resources, calling upon States parties to the Convention:

> "[T]o recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the rights to just, fair and prompt compensation."[54]

59. CERD thereby affirmed that restitution must be impracticable for factual, rather than simply legal or political, reasons. This requirement is important as many claims for restitution are wrongfully, even unlawfully, denied on the basis of legal regimes imposed upon the indigenous peoples by the occupying power. The "factually impracticable" requirement shifts the balance of the analysis away from legal or political obfuscation to the concrete question of whether lands can, in fact, be returned.[55] A lack of legal or political will cannot, therefore, be an excuse to favour compensation over restitution.

VI. CONCLUSIONS

60. The right of return encompasses not merely returning to one's country, but to one's home and lands as well. Furthermore, the right to return to one's home and lands is a necessary element to facilitate the right to return and, indeed, is a free-standing, autonomous right.

61. The international community has correctly recognized housing restitution to be an essential element of the right to return to one's home of refugees and displaced persons and as a necessary component of any lasting solution involving the voluntary, safe, dignified and durable repatriation of refugees and displaced persons. Indeed, housing restitution is an indispensable component of any strategy aimed at promoting, protecting and implementing the right to return.

62. In most circumstances, the conditions for safe and dignified return will not and cannot be met without adequate safeguards and mechanisms designed to protect and fulfil the right to return to one's home in safety and dignity.

63. Such safeguards and mechanisms should include effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of the right to return to one's home, including fair and effective mechanisms designed to resolve outstanding housing and property problems and thereby facilitate housing and property restitution.

64. The problems associated with housing and property restitution for displaced persons wishing to return to their homes are emerging as some of the key dilemmas facing policy- and law-makers in countries of return, and for which there is only limited legislative and precedent-creating guidance. While considerable progress has been made in terms of institutional development in support of restitution, the actual implementation of housing and property restitution has lagged far behind.

65. The success of repatriation programmes can be maximized when housing-based impediments to return are clearly identified through consistent, principled and pre-emptive strategies aimed at overcoming these all-too-common barriers to restitution. Treating housing and property restitution as a fundamental core element of any repatriation process, as well as exhibiting the will and devoting the necessary resources to securing this right, will greatly strengthen the likelihood of return becoming a process which promotes and realizes the housing rights of returnees, thus ensuring that return is safe, dignified and durable.

66. The adoption or application by States of laws which are designed to facilitate, or otherwise result in, the loss or removal of tenancy, use, ownership or other rights connected with housing or property; the active retraction of the right to reside in a particular place; or laws of abandonment employed against refugees or other displaced persons pose serious impediments to the return and reintegration of refugees and displaced persons, as well as to reconstruction and reconciliation.

67. International law recognizes that the remedy of compensation should only be used when restitution is impossible in fact, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution.

VII. RECOMMENDATION

68. The Sub-Commission should request, through the Commission on Human Rights, that the Economic and Social Council authorize the Sub-Commission to undertake a comprehensive study on housing and property restitution in the context of the return of refugees and displaced persons.

Notes*

[1] A/51/482 (11 October 1996), para. 53.

[2] See CERD/C/SR.1189 (8 March 1997).

[3] For the complete list of topics proposed to the Sub-Commission, see E/CN.4/Sub.2/1997/31, annex.

[4] Ibid.

[5] Ibid.

[6] Housing rights are enshrined in numerous instruments. For instance, the Universal Declaration of Human Rights (art. 25) and the International Covenant on Economic, Social and Cultural Rights (art. 11.1) both guarantee the right to adequate housing. Additionally, the International Covenant on Civil and Political Rights protects persons from arbitrary or unlawful interference with their home (art. 17.1); the International Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination on account of race, colour, or national or ethnic origin with respect to the right to housing (art. 5 (e) (iii)); the Convention on the Elimination of All Forms of Discrimination against Women obliges States parties to "condemn discrimination against women in all its forms" and, specifically, to eliminate discrimination against women in rural areas in order to ensure that such women enjoy adequate living conditions, particularly in relation to housing (arts. 2 and 14.2 (h)); the Convention on the Rights of the Child obliges States parties to provide, in cases of need, material assistance and support programmes to families and children, particularly with regard to housing (art. 27.3); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that "[m]igrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to ... (d) [a]ccess to housing, including social housing schemes, and protection against exploitation in respect to rents" (art. 43.1 (d)). Other international instruments guaranteeing housing rights include various International Labour Organization conventions, humanitarian law instruments and the Convention relating to the Status of Refugees.

[7] See also UNHCR EXCOM Conclusion No. 56 (XL)-1989, "Durable solutions and refugee protection" (13 October 1989).

[8] UNHCR EXCOM Conclusion No. 18 (XXXI)-1980, "Voluntary repatriation", para. 48 (3) (f), United Nations document A/AC.96/588 (16 October 1980).

[9] UNHCR EXCOM Conclusion No. 40 (XXXVI)-1985, "Voluntary repatriation", paras. (a) and (b) (18 October 1985).

[10] UNHCR, Handbook on Voluntary Repatriation, Geneva, UNHCR (1996).

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* The notes are reproduced in English only.

[11] See, ibid., annexes 5 and 6.

[12] See UNHCR Global Consultations on International Protection, "Voluntary repatriation", EC/GC/02/5 (25 April 2002), para. 23.

[13] See, e.g., Security Council resolutions 1287 (2000) (reaffirming the right of all refugees and displaced persons ... to return to their homes in secure conditions), 1244 (1999) (reaffirming the right of all refugees and displaced persons to return to their homes in safety), 1199 (1998) (reaffirming the right of all refugees and displaced persons to return to their homes in safety), 1036 (1996) (reaffirming the right of all refugees and displaced persons ... to return to their homes in secure conditions), 971 (1995) (reaffirming the right of all refugees and displaced persons ... to return to their homes in secure conditions), 876 (1993) (affirming the right of refugees and displaced persons to return to their homes), 820 (1993) (reaffirming ... that all displaced persons have the right to return in peace to their former homes and should be assisted in doing so); General Assembly resolutions 51/126 (reaffirming the right of all persons displaced ... to return to their homes or former places of residence), 35/124 (reaffirming the right of refugees to return to their homes in their homelands); Sub-Commission on the Prevention of Discrimination and Protection of Minorities resolutions 1998/26 (reaffirming the right of all refugees ... and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin), 1994/24 (affirming the right of refugees and displaced persons to return, in safety and dignity, to their country and/or within it, to their place of origin or choice); Committee on the Elimination of Racial Discrimination, General Recommendation XXII on refugees and displaced persons, (forty-ninth session) (A/51/18) (reaffirming that all ... refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety).

[14] See Security Council resolutions 1287 (2000), 1036 (1996), 971 (1995) and 876 (1993).

[15] See Security Council resolution 853 (1993).

[16] See Security Council resolution 752 (1992).

[17] See Security Council resolution 745 (1992).

[18] See Security Council resolution 1009 (1995).

[19] See Security Council resolution 361 (1974).

[20] See Security Council resolutions 1244 (1999) and 1199 (1998).

[21] See Security Council resolution 687 (1991).

[22] See Security Council resolution 385 (1976).

[23] See Security Council resolution 999 (1995).

[24] General Assembly resolution 1672 (XVI).

[25] General Assembly resolution 3212 (XXIX).

[26] General Assembly resolutions 51/126 and 194 (III).

[27] General Assembly resolution 51/114.

[28] Committee on the Elimination of Racial Discrimination, General Recommendation XXII on article 5 and refugees and displaced persons (forty-ninth session), A/51/18 (1996).

[29] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration, para. 65.

[30] See Scott Leckie, "Housing and property issues for refugees and internally displaced persons in the context of return: key considerations for UNHCR policy and practice", in Refugee Survey Quarterly, vol. 19, No. 3, Geneva, UNHCR (2000).

[31] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration, para. 65.

[32] See Commission on Human Rights resolution 1993/77, para. 1.

[33] See, e.g., Commission on Human Rights resolutions 2000/41 and 1999/33. Although resolution 1993/77 uses the term "gross" violation while resolution 1999/33 and 2000/41 use "grave" violation, the two terms are in practice synonymous. The draft "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law, to which resolutions 1999/33 and 2000/41 refer, apply to "gross violations of international human rights".

[34] General Assembly resolution 56/83, annex.

[35] Committee on the Elimination of Racial Discrimination, General Recommendation XXII on article 5 and refugees and displaced persons (forty-ninth session), A/51/18 (1996), annex VIII.C, para. 2 (d).

[36] See General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, Agreement on Refugees and Displaced Persons.

[37] See Agreements on a Comprehensive Political Settlement of the Cambodia Conflict (1991).

[38] See Agreement on Identity and Rights of Indigenous Peoples (Guatemala Peace Accords) (31 March 1995); Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (17 June 1994).

[39] See United Nations Interim Administration in Kosovo (UNMIK) Regulation No. 1999/23 (on the establishment of the Housing and Property Directorate and the Housing and Property Claims Commission) (15 November 1999).

[40] See General Peace Agreement (4 October 1992), Protocol III, Section IV; Tripartite Agreement between the Government of the Republic of Mozambique, the Government of Zimbabwe and UNHCR for the Voluntary Repatriation of Mozambican Refugees from Zimbabwe (1993).

[41] See Arusha Peace Agreement (August 1993).

[42] See Law on the Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens (3 April 1998) (Federation of Bosnia and Herzegovina); Law on the Cessation of the Application of the Law on Abandoned Apartments (1998) (Federation of Bosnia and Herzegovina); Law on the Taking Over of the Law on Housing Relations (Federation of Bosnia and Herzegovina); Law Amending the Law on the Sale of Apartments with Occupancy Rights (6 December 1997) (Federation of Bosnia and Herzegovina); Law on the Cessation of the Application of the Law on the Use of Abandoned Property (2 December 1998) (Republika Srpska), in their amended forms.

[43] See Restitution on Ownership of Nationalized Real Property Act of 1992.

[44] See Law No. 116/1994 Coll.; Law No. 87/1991 Coll.

[45] See Law on the Fundamentals of Ownership Reform of 1991, as amended in 1993; Land Reform Act of 1991, as amended in 1993.

[46] See Federal Restitution Law of 1957; German Act Regulating Unresolved Property of 1990.

[47] See Ministerial Order No. 01/96 of 23 September 1996 Regarding the Temporary Management of Land Property.

[48] See Denationalization Law (1991, as amended 1998).

[49] See Constitution of the Republic of South Africa, art. 25 (1996); Restitution of Land Rights Act 22 of 1994.

[50] See Special Law on the Return of Illegally Occupied Houses; Law of the Republic of Tajikistan on Forced Migrants (20 July 1994); Resolution No. 542 of 22 August 1995 on Additional Measures Facilitating the Return of Refugees-Citizens of the Republic of Tajikistan and Forced Migrants to the Places of Permanent Residence and Their Social and Legal Protection.

[51] See Annex 7, Chapter II of the General Framework Agreement for Peace in Bosnia and Herzegovina (14 December 1995).

[52] See UNMIK Regulation No. 1999/23 (on the establishing of the Housing and Property Directorate and the Housing and Property Claims Commission) (15 November 1999).

[53] UNHCR, UNHCR's Operational Experience with Internally Displaced Persons: A Preliminary Review, p. 9, Geneva, UNHCR, Division of International Protection (1994).

[54] Committee on the Elimination of Racial Discrimination, General Recommendation XXIII on the rights of indigenous peoples (fifty-first session), A/52/18, annex V, para. 5 (1997).

[55] Bret Thiele, "Enforcing the right to restitution: legal strategies for indigenous peoples and the role of international law", in Housing and Property Restitution: A Comparative Study (Scott Leckie, ed.), New York, Transnational Publishers (2002).